

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S4/26/21

A Bill

SENATE BILL 375

5 By: Senators J. Dismang, Hickey
6

For An Act To Be Entitled

8 AN ACT TO DEFINE THE MONIES TO BE AVAILABLE IN THE
9 RESTRICTED RESERVE FUND; AND TO ALLOW THAT ADDITIONAL
10 FUNDS MAY BE MADE AVAILABLE FOR STATE AGENCIES AND
11 INSTITUTIONS APPROPRIATIONS; AND FOR OTHER PURPOSES
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Subtitle

14 AN ACT TO DEFINE THE MONIES TO BE
15 AVAILABLE IN THE RESTRICTED RESERVE FUND;
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17 MADE AVAILABLE FOR STATE AGENCIES AND
18 INSTITUTIONS APPROPRIATIONS; AND FOR
19 OTHER PURPOSES
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. DO NOT CODIFY. Legislative findings – Nonseverability.

26 (a) The General Assembly finds that:

27 (1) Determining the maximum amount of appropriation and funding
28 for a state agency or institution each fiscal year is the prerogative of the
29 General Assembly;

30 (2) Determining the maximum amount of appropriation and funding
31 for a state agency or institution is usually accomplished by delineating the
32 maximum amounts in the appropriation acts for the state agency or institution
33 and in the general revenue allocations authorized for each relevant fund and
34 fund account by amendment to the Revenue Stabilization Law, § 19-5-101 et
35 seq.;

36 (3) The Restricted Reserve Fund has established procedures for



1 the transfer of funds to various funds and fund accounts for the efficient
2 and effective operation of state government; and

3 (4) It is necessary and appropriate that the General Assembly
4 maintain oversight by requiring prior approval of the Legislative Council or,
5 if the General Assembly is in session, the Joint Budget Committee, as
6 provided in § 19-5-1263(c).

7 (b) The requirement of approval by the Legislative Council or, if the
8 General Assembly is in session, the Joint Budget Committee, is not a
9 severable part of § 19-5-1263. If the requirement of approval by the
10 Legislative Council or, if the General Assembly is in session, the Joint
11 Budget Committee, is ruled unconstitutional by a court of competent
12 jurisdiction, § 19-5-1263 (c)(d) and (e) are void in their entirety.

13
14 SECTION 2. DO NOT CODIFY. TRANSFERS TO THE RESTRICTED RESERVE FUND.
15 Immediately upon the effective date of this Act, as soon thereafter as is
16 practical or as authorized in this Section the State Treasurer shall transfer
17 and credit to the "Restricted Reserve Fund" or the "Rainy Day Fund" as
18 authorized in subsection (a)(2) herein, upon certification of the amounts
19 thereof by the Chief Fiscal Officer of the State, the following:

20 (a)(1) Any unobligated funds, which are set aside as authorized in
21 Subsections (b)(2)(4)(5)(6) and (7) of Section 3 of Act 1023 of 2019,
22 remaining in the Rainy Day Fund, on July 1, 2021;

23 (2) Any unobligated funds remaining in the Rainy Day Fund from funds
24 made available Subsections (d)(1) and (2) of Section 3 of Act 1023 of 2019
25 shall be transferred to the Rainy Day Fund, on July 1, 2021;

26 (3) Any unobligated funds remaining in the Rainy Day Fund from funds
27 made available for the Debt Obligations/Priority Rainy Day Set-Aside, for a
28 transfer to the Economic Development Incentive Quick Action Closing Fund as
29 authorized in subsection (b)(3) of Section 3 of Act 1023 of 2019 shall be
30 transferred and credited to the Restricted Reserve Fund for the Quick Action
31 Closing Fund Carry Forward Set-Aside authorized in Section 3(a)(3)(B) of this
32 Act, on July 1, 2021;

33 (b) All unobligated and unallocated monies remaining in the "General
34 Improvement Fund" or the "Development and Enhancement Fund" on June 30, 2021
35 which are not required to finance projects to be financed therefrom pursuant
36 to appropriations enacted by the General Assembly, or which have not been

1 reappropriated or reallocated for financing from the "Development and
2 Enhancement Fund" by the 93rd General Assembly;

3 (c)(1) Any unobligated or unallocated funds remaining on July 2, 2021 in
4 the "General Revenue Allotment Reserve Fund" from monies accruing thereto
5 which are not required to finance enactments of the 93rd General Assembly
6 that do not expire on June 30, 2021, including all General Revenue Funds
7 recovered from remaining fund balances;

8 (2) All General Revenue Funds recovered from remaining fund balances
9 in the "General Revenue Allotment Reserve Fund" from monies accruing thereto
10 during the 2021-2022 fiscal year which are not required to finance enactments
11 of the 93rd General Assembly that do not expire on June 30, 2022, including
12 all General Revenue Funds recovered from remaining fund balances;

13 (d) Those special revenues credited to the General Improvement Fund or
14 the Development and Enhancement Fund from estate taxes as set out in Arkansas
15 Code § 19-6-301(171);

16 (e) Other revenues as may be transferred or authorized by law.

17
18 SECTION 3. DO NOT CODIFY. RESTRICTED RESERVE FUND DISTRIBUTION AND
19 SET-ASIDES. (a) After having transferred or set-aside the obligations as set
20 out in §19-5-202(b)(2)(B)(iii) as determined by the Chief Fiscal Officer of
21 the State, those funds transferred and credited to the Restricted Reserve
22 Fund as authorized in Section 2 of this Act and any current unobligated
23 balances in the Restricted Reserve Fund, the State Treasurer shall first set-
24 aside one hundred seventy one million four hundred and five thousand dollars
25 (\$171,405,000) for the "Restricted Reserve Fund Set-Asides" as enumerated in
26 subsections (a)(1) through (a)(3) of this section, with the exception of
27 (a)(3)(B) Quick Action Closing Fund Carry Forward Set-Aside funds to be made
28 available as authorized in Section 2(a)(3) of this Act.

29 (1) Notwithstanding other provisions of law as set out in 19-5-
30 1263(c) the Set-Asides authorized in subsections (a)(1)(A) and (B) herein
31 shall require prior approval of the greater of three-fifths (3/5) of the
32 quorum present or a majority of the membership by the Legislative Council
33 during the extended recess, beginning on May 1, 2021, of the 2021 Regular
34 Session or during the interim, or the Joint Budget Committee during a regular
35 session, fiscal session, or extraordinary session of the General Assembly in
36 the vote for the disbursements;

1 (A) Executive/Legislative 3/5 Vote Set-Aside. For transfers from
2 time to time as determined by the Chief Fiscal Officer of the State, in a sum
3 not to exceed \$133,500,000;

4 (B) State Police Vehicles 3/5 Vote Set-Aside. For transfers from
5 time to time as determined by the Chief Fiscal Officer of the State for the
6 Division of State Police Fund for State Police Vehicles, in a sum not to
7 exceed \$3,000,000.

8 (2) Notwithstanding other provisions of law as set out in 19-5-
9 1263(c) the Unallocated Restricted Reserve Majority Vote Set-Aside authorized
10 in subsections (a)(2)(A) herein shall only require a majority affirmative
11 vote as set out in the rules of the Legislative Council during the extended
12 recess, beginning on May 1, 2021, of the 2021 Regular Session or during the
13 interim, or the Joint Budget Committee during a regular session, fiscal
14 session, or extraordinary session of the General Assembly for prior approval
15 of the disbursement;

16 (A) Unallocated Restricted Reserve Majority Vote Set-Aside. For
17 transfers from time to time as determined by the Chief Fiscal Officer of the
18 State, in a sum not to exceed \$15,000,000.

19 (3) Notwithstanding other provisions of law the Set-Asides
20 authorized in subsections (a)(3)(A) through (C) herein shall not be subject
21 to the approval requirements set out 19-5-1263(c) and shall only require
22 reporting of the date and amount of transfers;

23 (A) Economic Stimulus Programs Set-Aside. For transfers from
24 time to time to the Department of Commerce Arkansas Economic Development
25 Commission to fund or fund accounts as determined by the Chief Fiscal Officer
26 of the State for funding for economic stimulus activities throughout the
27 state, in a sum not to exceed \$5,800,000;

28 (B) Quick Action Closing Fund Carry Forward Set-Aside. To the
29 Economic Development Incentive Quick Action Closing Fund, for incentives to
30 attract new business and economic development to the state, for transfers
31 from time to time from funds made available as authorized in Section 2(a)(3)
32 of this Act;

33 (C) Department of Correction Lease Payments Set-Aside. For the
34 Department of Correction to the Development and Enhancement Fund or its
35 successor fund or fund accounts or any appropriation authorized by the
36 General Assembly for the Department of Correction debt service payments, in a

1 sum not to exceed \$14,105,000.

2 (b) The next ten million dollars (\$10,000,000) shall be transferred to
 3 the Rainy Day Fund. This transfer to the Rainy Day Fund shall not be subject
 4 to the approval requirements set out 19-5-1263(c), however after the funds
 5 are transferred to the Rainy Day Fund those funds shall be subject to any
 6 requirements set out in law for Rainy Day Fund distributions for reporting or
 7 prior approval by the Legislative Council during the extended recess,
 8 beginning on May 1, 2021, of the 2021 Regular Session or during the interim,
 9 or the Joint Budget Committee during a regular session, fiscal session, or
 10 extraordinary session of the General Assembly.

11 (c) Then all remaining unobligated funds not set-aside, that are
 12 transferred or credited to the Restricted Reserve Fund and any future
 13 collections, deposits and transfers authorized in Section 2 of this Act shall
 14 be transferred and credited to the Long Term Reserve Fund.

15 (d) On July 1, 2023 any unobligated funds remaining in the Restricted
 16 Reserve Fund Set-Asides established in subsection (a) herein shall be
 17 transferred to the Long Term Reserve Fund.”

18
 19 SECTION 4. CODE AMENDMENT. Arkansas Code § 19-5-1262 is repealed.

20 ~~19-5-1262.— Rainy Day Fund.~~

21 ~~(a) There is created on the books of the Treasurer of State,~~
 22 ~~the Auditor of State, and the Chief Fiscal Officer of the State a~~
 23 ~~miscellaneous fund to be known as the “Rainy Day Fund”.~~

24 ~~(b) The Rainy Day Fund shall consist of:~~

25 ~~(1) Funds transferred to the Rainy Day Fund from the~~
 26 ~~General Improvement Fund or its successor fund or fund accounts, including~~
 27 ~~the Development and Enhancement Fund;~~

28 ~~(2) Attorney General settlement funds;~~

29 ~~(3) Interagency transfers of funds to the Rainy Day~~
 30 ~~Fund;~~

31 ~~(4) Any revenues provided by law; and~~

32 ~~(5) Any other funds and fund transfers provided for by~~
 33 ~~law.~~

34 ~~(c) The Chief Fiscal Officer of the State shall use the~~
 35 ~~Rainy Day Fund for transfers to:~~

36 ~~(1)(A) Provide funding for one (1) or more~~

1 ~~appropriations or reappropriations enacted by the General Assembly from the~~
 2 ~~General Improvement Fund or its successor fund or fund accounts, including~~
 3 ~~the Development and Enhancement Fund.~~

4 ~~(B) At the time of a transfer under subdivision~~
 5 ~~(e)(1)(A) of this section, the Chief Fiscal Officer of the State shall notify~~
 6 ~~the Legislative Council or, if the General Assembly is in session, the Joint~~
 7 ~~Budget Committee, of the transfer of funds, the amount of funds transferred,~~
 8 ~~and the purpose of the transfer; and~~

9 ~~(2) One (1) or more funds or fund accounts authorized by~~
 10 ~~the General Assembly, other than the General Improvement Fund or its~~
 11 ~~successor fund or fund accounts, including the Development and Enhancement~~
 12 ~~Fund, upon prior approval by the Legislative Council or, if the General~~
 13 ~~Assembly is in session, the Joint Budget Committee.~~

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 15 SECTION 5. EFFECTIVE DATE. Section 4 of this act is effective on and
 16 after December 31, 2022 and any remaining unobligated balances in the Rainy
 17 Day Fund shall be transferred to the Long Term Reserve Fund at that time.

18
 19 SECTION 6. CODE AMENDMENT. Arkansas Code § 19-5-406, concerning the
 20 transfer of remaining general revenues is amended to read as follows:
 21 19-5-406. Transfer of remaining revenues.

22 After making the maximum annual allocation as provided for in § 19-5-402:

23 (1) The first two hundred million shall be distributed as follows:

24 ~~(1)(A)~~ Seventy-five percent (75%) of the remaining general revenues
 25 available for distribution during each fiscal year shall be transferred on
 26 the last day of business in each calendar month to the General Revenue
 27 Allotment Reserve Fund, there to be used for the respective purposes as
 28 provided by law; and

29 ~~(2)(B)~~ Twenty-five percent (25%) of the remaining general revenues
 30 available for distribution during each fiscal year shall be transferred on
 31 the last day of business in each calendar month to the ~~Arkansas Highway~~
 32 ~~Transfer Fund~~ State Highway and Transportation Department Fund.

33 (2) Any additional revenues available after the distributions in
 34 subsection (1) shall be transferred on the last day of business in each
 35 calendar month to the General Revenue Allotment Reserve Fund, there to be
 36 used for the respective purposes as provided by law.

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SECTION 7. Arkansas Code § 19-5-1263(c) and (d), concerning the Restricted Reserve Fund, are amended to read as follows:

(c) For the purpose of and after meeting the requirements of subsection (d) of this section, the Chief Fiscal Officer of the State may from time to time transfer on his or her books and those of the Treasurer of State and the Auditor of State funds from the Restricted Reserve Fund to one (1) or more general revenue operating funds or fund accounts, the Miscellaneous Agencies Fund Account, the Arkansas Department of Transportation for state matching funds, ~~and~~ the State Central Services Fund, the Development and Enhancement Fund, and any fund, fund account, or appropriations authorized by the General Assembly upon prior approval of the greater of three-fifths (3/5) of the quorum present or a majority of the membership of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(d)(1) If at any time during the fiscal year a department, state agency, board, commission, state institution of higher education, or constitutional officer determines that it is necessary to perform its duties or is in the best interest of the citizens of the State of Arkansas to request a transfer from the Restricted Reserve Fund, that entity shall submit a detailed request in writing to the Chief Fiscal Officer of the State stating:

- (A) The need and purpose of the transfer;
- (B) Efforts to find efficiencies and savings prior to making the request;
- (C) Current year-to-date budget and expenditures by line item; and
- (D) A detailed line item budget reflecting proposed expenditures in the amount requested.

(2) The Chief Fiscal Officer of the State may request additional information to make a determination and may then approve, modify, or deny the request.

(3) Upon the determination by the Chief Fiscal Officer of the State that a transfer is necessary, the Chief Fiscal Officer of the State shall submit the entity's request and his or her recommendation for approval as required in subsection (c) of this section.

1 SECTION 8. DO NOT CODIFY. Conditions and Audit. (a) Transfer of funds
2 from the "Restricted Reserve Fund" shall be made only after the Chief Fiscal
3 Officer of the State has determined that all criteria or pre-conditions
4 established in the appropriation act to receive the transfer have been met
5 and that a Method of Finance has been filed with the Office of Accounting in
6 the Department of Finance and Administration, if required.

7 (b) Any matching funds as may be provided in law shall be certified to
8 the Chief Fiscal Officer of the State prior to the commencement of the
9 project.

10 (c) Any recipient of the funds appropriated herein are also subject to
11 an audit by the Arkansas Legislative Audit of the Legislative Joint Auditing
12 Committee in order to determine that the use of the funds was in compliance
13 with the intent and appropriated purposes of the General Assembly.

14
15 SECTION 9. DO NOT CODIFY. Funding Authority. (a) Any enactment of the
16 93rd General Assembly in either regular, fiscal or extraordinary session
17 appropriating, transferring or allocating funds to the "Restricted Reserve
18 Fund" may be deemed to be payable from the "Restricted Reserve Fund".

19 (b) Appropriations which are not enumerated in this Act may be
20 financed from monies accruing to the "Restricted Reserve Fund" to fund
21 appropriations authorized by the General Assembly and as set out in law.

22
23 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
24 General Assembly that the effectiveness of this Act on the date of its
25 passage and approval is essential to allow transfers which can provide an
26 additional funding mechanism for the operation of state departments, agencies
27 and institutions of higher education, as well as to address unforeseen needs
28 of the state through the disbursement of state funds with the Restricted
29 Reserve Fund as authorized in this Act, and that in the event of an extension
30 of the Session, the delay in the effective date of this Act beyond the date
31 of its passage and approval could work irreparable harm upon the proper
32 transfer of funds, administration and provision of essential governmental
33 programs. Therefore, an emergency is hereby declared to exist and this Act
34 being necessary for the immediate preservation of the public peace, health
35 and safety shall be in full force and effect from and after the date of its
36 passage and approval.

1 If the bill is neither approved nor vetoed by the Governor, it shall
2 become effective on the expiration of the period of time during which the
3 Governor may veto the bill. If the bill is vetoed by the Governor and the
4 veto is overridden, it shall become effective on the date the last house
5 overrides the veto.

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/s/J. Dismang